IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 1743 of 1992

Rashtriya Chemicals and Fertilizers
Limited, a Government of India
Undertaking a Company incorporated and
registered under the Companies Act, 1956
and having its Registered Office at
'Priyadarshini', Eastern Express Highway,
Sion, Bombay 400 022 .. Petitioner.

V/s.

1. Municipal Corporation of
   Greater Bombay having its
   Offices at Municipal Corporation
   Building, Mahapalika Marg,
   Bombay 400 001

2. The Chief Engineer (Sewerage
   Operation), Municipal Corporation
   of Bombay having his office at
   Municipal Corporation

3. The Assistant Engineer (Water
   Works), Municipal Corporation of
   Greater Bombay having his office
   at 'M' (West) Ward, Chembur,
   Bombay 400 071.

4. The Assessor and Collector of
   Municipal Taxes, Assessment
   Collection Department, Municipal
   Corporation Building, Mahapalika
   Marg, Bombay 400 001

5. The State of Maharashtra .. Respondents.

Mr. D.J. Khambata with Mr. S. Chagla with
Ms. Swati Deshpande i/b. M/s. M.S. Bodhanwala & Co.
for the Petitioner.

Mr. K.K. Singhvi, Sr. Counsel with Ms. N.V. Sanglikar
for the Respondent-Corporation.

Mr. R.J. Mane, A.G.P. for the Respondent-State.

CORAM : S. RADHAKRISHNAN &
S.A. BOBDE, JJ.
DATED : 21.10.2004.

JUDGMENT (PER - S. RADHAKRISHNAN, J.):-

1. By this Petition, the Petitioner Rashtriya Chemicals

and Fertilizers Ltd. is challenging the levy of sewerage charges amounting to Rs. 31,59,75,195/- levied by the Respondent Mumbai Municipal Corporation to be without authority of law, illegal, void and arbitrary.

2. The brief facts are that the Petitioner has a factory plot as well as a hostel and township plot. It appears that all the three plots have their own water connections from the Respondent Municipal Corporation. There is no dispute that the Petitioner's hostel and township plots are duly connected to the Municipal sewerage system and that they are paying the respective sewerage charges in respect of the water connection with regard to the hostel and township plots. The dispute is only with regard to the factory plot. It is also an admitted position that even on the said factory plot, there is a water connection. The Petitioner seems to have provided a private sewerage and effluent treatment system in the said factory plot. There are industrial activities on the factory plot manufacturing chemicals, ammonia and fertilizers and also domestic premises such as administrative blocks and toilet blocks etc. on the said plot. Around 7 million gallons of water is being used by the Petitioners every day for the industrial premises and 1 million gallon of water for the domestic purpose on the said plot. It is the case of the Petitioner that the entire quota of the water used for the industrial premises is re-circulated and re-processed and does not cause any substantive discharge of water or effluent. Only a small part of

the water effluent is discharged from the industrial premises. The Petitioner also contends that a small quantity of effluent is discharged from the domestic premises also. According to the Petitioner, even these discharges are treated in the effluent plant and is thereafter absorbed into the Petitioner's septic tanks, wet-well etc. Finally such treated effluent water is released into two channels running through the Petitioner's land. The Petitioners contend that these channels are constructed and maintained at the cost of the Petitioners and they finally carry the said discharge into a creek which is known as Anik-Mahul-Nallah/Creek. The main contention of the Petitioner is that as the said Anik-Mahul-Nallah/Creek does not vest in the Mumbai Municipal Corporation and as such they are not entitled to levy any sewerage charges for the same. The Petitioner contends that merely maintaining or cleaning or servicing the said nallah would not constitute vesting and in any event, the learned counsel for the Petitioner contended that the provisions of Section 220-A of the Mumbai Municipal Corporation Act have not been complied with and as such the same can not vest with the Respondent Corporation. In that behalf, strong reliance is placed on behalf of the learned counsel for the Petitioner on the Division Bench Judgment of our High Court in **Hindustan Petroleum Corporation Ltd. Vs. Municipal Corporation of Greater**

Bombay and others. The learned counsel for the Petitioner also relied on Judgment of the Supreme Court, which confirmed the above Division Bench Judgment in **Municipal Corporation of Greater Bombay Vs. Hindustan Petroleum Corporation Ltd. (2001) 8 S.C.C. 143.** Therefore, the contention of the learned counsel for the Petitioner is that unless and until the Respondent Corporation is able to establish that the said Nallah vests in the Mumbai Municipal Corporation, they are not entitled to levy such sewerage charges.

3. Shri Khambatta, the learned counsel appearing on behalf of the Petitioner relied on the Affidavit filed on behalf of State of Maharashtra, wherein it is stated that the said Nallah does not belong to the Mumbai Municipal Corporation and whereas the same belongs to the Petitioner. Subsequent thereto, even the Petitioner has filed an affidavit, confirming that the said nallah is running through the land belonging to the Petitioner. It may be noted that the nallah is virtually a marshy portion of land, which finally leads to the sea. The compound wall of the Petitioner ends much prior to the said nallah. The learned counsel for the Petitioner, therefore, prayed that as the said Anik-Mahul/Nallah-Creek does not vest in the Respondent Corporation, they have no authority to collect the sewerage charges, as there is no Municipal sewerage

system connected to the Petitioner’s sewerage system.

4. Shri Singhvi, the learned counsel appearing on behalf of the Respondent Corporation strongly contended that the said factory has been granted building permission under section 234 of the Mumbai Municipal Corporation Act, which requires that said building has to be connected to a municipal sewerage system. Therefore, the Petitioner cannot unilaterally discontinue it’s user. Shri Singhvi pointed out that there is no dispute that the Petitioner’s sewerage disposal is connected to the Municipal Sewerage system near Ashish Theatre. It appears that subsequently in the year 1981, the Petitioner seems to have unilaterally dis-continued using the said sewerage facility, which is connected to the Municipal sewerage system. Shri Singhvi pointed out that the Municipal Corporation has not granted any permission to such dis-connection. Merely because the Petitioner chooses not to discharge into the Municipal sewerage system, the Petitioner cannot be absolved from the liability to pay sewerage charges. The contention of the learned counsel for the Respondent Corporation is that once the sewerage disposal is connected to the municipal sewerage system, unless and until the Respondent Corporation expressly grants permission for dis-connection, the Petitioner will not be absolved from paying the sewerage charges.

5. Secondly, Shri Singhvi contended that all the plots of the Petitioner constitute one premises and once any part of the said premises of the Petitioner company is connected to the Municipal Sewerage system, they are liable to pay the sewerage charges for all discharges. Shri Singhvi contended that there is no question of separate water connection for the purpose of sewerage charges. Thirdly, Shri Singhvi also pointed out that the said Anik-Mahul/Nallah-Creek vests in the Respondent Corporation, as they have been managing, cleaning, dredging, de-silting and repairing for the last 50 years. Hence, he submitted that it should be deemed to vest in the Respondent Corporation and if that be so, the Petitioner is liable to pay the sewerage charges. Shri Singhvi also pointed out that the land, wherein the said nallah is situated, there is no clear title to the same and the same can be clearly established only through a regular Suit. Shri Singhvi also pointed out that in the factual aspect that the earlier sewerage system being connected near Ashish theatre, which later the Petitioner seems to have dis-continued using also needs evidence in the sense as the sewerage system still stands connected, however that does not absolve the Petitioner’s liability to pay the sewerage charges.

Shri Singhvi also referred to a Judgment of a learned Single Judge of this Court in **The Swadeshi Mills Co. Ltd. & Anr. Vs. The Muncipal Corporation of Greater Bombay and Ors.** in Writ Petition No. 301 of 1980 dated 12.7.1984, wherein the learned Single Judge has held that once the Petitioner's sewerage system is connected to the municipal sewerage system, the liability to pay the sewerage charges continues even if the same is not used.

6. Shri Khambatta, sought to contend that there are no disputed questions of facts and as such relied on the aforesaid Judgment of the Supreme Court in **Mumbai Municipal Corporation Vs. Hindustan Petroleum Corporation Ltd. (2001) 8 SCC 143** and submitted that the Petitioners are not liable to pay the said sewerage charges. He also contended that the levy made by the Respondent Corporation is totally without authority of law, illegal, void and arbitrary.

7. Having regard to the above facts and circumstances and the facts disclosed in the above Petition, there is no clear indication with regard to the title of the land with regard to the said Anik-Mahul/Nallah-Creek and the said title can only be established by leading appropriate evidence. Over and above, even there are disputes with regard to the earlier sewerage system,

which is connected to the municipal sewerage system near Ashish theatre, also require evidence to be established whether the same system still stands connected and if it is established that the said system still stands connected to the municipal sewerage system, then the Respondent Corporation is entitled to levy the municipal sewerage charges. Having regard to the above facts and circumstances, we are clearly of the view that there are a number of disputed questions of facts involved in the above Petition, which can not be conveniently gone into and decided in a Writ Petition under Article 226 of the Constitution of India. Under the aforesaid facts and circumstances, we are not inclined to interfere in the above Petition. Rule stands discharged, however with no order as to costs.

(S. RADHAKRISHNAN, J.)

(S.A. BOBDE, J.)